

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on January 30, 2001 at 8:00 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. Darrel Adams (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. Ken Peterson (R)  
Rep. Diane Rice (R)  
Rep. Bill Thomas (R)  
Rep. Merlin Wolery (R)  
Rep. Cindy Younkin (R)

**Members Excused:** Rep. Jeff Mangan (D)

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Mary Lou Schmitz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: **SB 40 - 1-25-01**

Executive Action: **HB 266 - DPAA**  
**HB 286 - DPAA**

SB 40 - BCI

HEARING ON SB 40

**Sponsor:** Sen. Chris Christiaens, SD 23, Great Falls said the current interstate compact has been in place for the past 60 years and there have not been any changes. There are large numbers of inmates throughout the nation to move across state lines and with a good interstate compact, what probation and parole is able to do, is maintain good supervision of those inmates and to make sure they are living under the conditions that they were released. **EXHIBIT**(juh24a01)

**Proponents:** Mike Ferriter, Administrator, Community Corrections Division, Department of Corrections.

Connie Perrin, Deputy Compact Administrator,  
Department of Corrections.

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**Opponents:** None

**Questions from Committee Members and Responses:** Rep. Newman asked Ms. Perrin, under the current interstate compact, what authority do Montana officials have to accept or refuse supervision of particular parolees? Ms. Perrin said the compact administrators have come together and written rules with regard to who qualifies to transfer to other states and the types of cases they cannot refuse to supervise. That would be offenders who, though sentenced in one state, have no ties or are maybe traveling through, commit a crime and sentenced in the state with ties to another state. Once it is verified they are residents of that state, have a means to support themselves or have family, then with the rules of the compact her department is required to look at and determine if it's in the best interest of the offender and of the community and then they are obligated to supervise them.

Rep. Newman referred to EXHIBIT 1 saying there are about 2 to 2-1/2 times as many Montana parolees being supervised outside the state as out-of-state parolees being supervised in Montana. He asked if that is historically consistent? Ms. Perrin said yes. Currently there are just under 500 offenders who have come from other states they are supervising here because they are residents of this state and have families here who help support them. The department sends out almost twice as many.

Reps. Peterson, Harris, Adams to Ms. Perrin for clarification.

Closing by Sponsor: Sen. Christiaens closed the Hearing on SB 40.

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EXECUTIVE ACTION ON HB 266

Motion: REP. CLANCY moved that HB 266 DO PASS. #1

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Discussion: Rep. Clancy said, without objection, Andy Skinner, Board Member, Helena Property Association, would address some questions Committee members had. EXHIBIT(juh24a02)

Motion: REP. CLANCY moved that HB 266 BE AMENDED. #2

Discussion: Reps. Clancy, Clark.

Motion: REP. CLARK moved a substitute motion that the request had to be in writing. #3

Discussion: Reps. Gutsche, Clancy, Harris, Newman, Noennig, Holden.

Motion: REP. NEWMAN moved a substitute motion to segregate amendment #5 and vote on 1-2-3-4. #4

Discussion: Reps. Adams, Newman, Harris, Shockley, Peterson, Clark, Noennig, Curtiss.

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Discussion: Reps. Peterson, Clancy, Harris, Clark.

Vote: Motion (#4) carried 17-1 with Rep. Gallus voting no.

Motion: REP. ADAMS moved that HB 266 DO PASS AS AMENDED. #5  
Rep. Adams withdrew his motion.

Motion: REP. PETERSON moved a conceptual substitute motion that HB 266 BE AMENDED to read "an applicant may contest a written statement of legal authority by filing a complaint in District Court. If successful in contesting the governmental act, the Court may award damages on each issue upon which the applicant prevails, costs and attorneys' fees." #6

Discussion: Reps. Noennig, Clancy, Adams, Peterson, Newman, Shockley, Rice, Gallus, Mr. MacMaster for clarification and explanation.

Vote: Motion #6 failed 8-11 with Reps. Shockley, Laszloffy, Clark, Adams, Gutsche, Harris, Hurdle, Mangan, Newman, Noennig and Wolery voting no.

Motion: REP. NOENNIG moved a substitute amendment for #5 to read "an applicant may contest a written statement of legal authority in District Court, is entitled to recover damages resulting from an improper statement of legal authority, and must be granted costs and attorney fees if the applicant prevails". #7

Discussion: Reps. Noennig, Gutsche, Harris.

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Further Discussion: Reps. Noennig, Clancy, Newman, Peterson, Clark.

Vote: Motion #7 carried 19-1 with Rep. Gallus voting no.

Motion: REP. NOENNIG moved that HB 266 DO PASS AS AMENDED. #8

Discussion: Rep. Noennig.

Motion: REP. NOENNIG moved that HB 266 BE AMENDED to read Page 1, line 13, "within 30 days after" instead of "when" and on line 16, following what is now "legal authority" insert "or within 30 days of the written request by the applicant, whichever is later. #9

Discussion: Reps. Noennig, Holden, Harris, Clancy.

Vote: Motion (#9) carried 19-1 with Rep. Gallus voting no.

Discussion: Reps. Gallus, Clancy, Harris, Clark.

Motion/Vote: REP. NEWMAN moved that HB 266 DO PASS AS AMENDED. #10. Motion carried 17-3 with Reps. Gallus, Gutsche and Mangan voting no.

EXECUTIVE ACTION ON HB 286

Motion: REP. THOMAS moved that HB 286 DO PASS. #11  
**EXHIBIT**(juh24a03) **EXHIBIT**(juh24a04) **EXHIBIT**(juh24a05)

Discussion: Reps. Thomas, Newman, Eggers, Laszloffy, Peterson, Shockley, Younkin, Harris, Noennig, Adams, Hurdle cited several examples relating to the Bill.

Mr. MacMaster offered a point of information. He said the Constitution gives the Montana Supreme Court the power to adopt rules of procedure, therefore, the legislature cannot legislate in this area. If the Supreme Court has not pre-empted a subject with rules then arguably the legislature can pass a statute to set a rule of court for that area.

Discussion: Reps. Newman, Peterson, Rice.

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Motion: REP. HARRIS moved that HB 286 BE AMENDED, line 26, after defendant "or the defendant's rights to a fair trial would be jeopardized." #12

Discussion: Reps. Eggers, Adams, Thomas, Shockley, Harris, Laszloffy.

Motion: REP. NOENNIG moved that HB 286 DO PASS AS AMENDED. #13

Discussion: Reps. Eggers, Shockley.

Vote: Motion carried 12-8 with Reps. Shockley, Clark, Adams, Gallus, Gutsche, Hurdle, Mangan and Rice voting no.

#### EXECUTIVE ACTION ON HB 229

Motion: REP. PETERSON moved that HB 229 DO PASS. #14

**EXHIBIT**(juh24a06)

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Discussion: Reps. Peterson, Clark, Eggers, Newman, Gallus, Harris, Adams, Hurdle.

Motion: REP. CLARK moved that HB 229 BE AMENDED. #15

Discussion: Mr. MacMaster said there is no way the Committee can adopt this amendment. The Bill states in three or four places that uses language "or with any amount" and the amendment has language "in any amount equal to or in excess of the following levels".

Further Discussion: Reps. Peterson, Clark.

Rep. Clark withdrew his amendment (#15)

Discussion: Reps. Eggers, Harris, Gallus, Newman, Noennig.

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Discussion: Reps. Harris, Holden, Younkin, Noennig, Peterson, Shockley.

Motion/Vote: REP. PETERSON moved that HB 229 DO PASS. #16  
Motion failed 9-10 with Reps. Shockley, Laszloffy, Adams, Gutsche, Harris, Hurdle, Mangan, Noennig and Wolery voting no.

Motion/Vote: REP. LASZLOFFY moved that HB 229 BE TABLED. #17  
Motion carried 17-2 with Reps. Curtiss and Younkin voting no.

EXECUTIVE ACTION ON SB 40

Motion/Vote: REP. NEWMAN moved that SB 40 BE CONCURRED IN. #18  
Motion carried unanimously 17-0.

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**ADJOURNMENT**

Adjournment: 12:00 P.M.

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REP. JIM SHOCKLEY, Chairman

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MARY LOU SCHMITZ, Secretary

JS/MS

**EXHIBIT** (juh24aad)